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 7 CALIFORNIA APPRENTICESHIP COORDINATORS
 8 ASSOCIATION

9 BEFORE THE

10 CALIFORNIA APPRENTICESHIP COUNCIL

11 FRESNO AREA PLUMBERS, PIPE AND
 12 REFRIGERATION FITTERS JATC,

DAS NO: 98-17

13 Charging Party,

14 Vs.

15 PHCC OF THE GREATER SACRAMENTO AREA;
 16 PHCC OF THE GREATER SACRAMENTO AREA
 17 PLUMBERS UNILATERAL APPRENTICESHIP
 18 COMMITTEE,

19 Respondents,

20 TEN BAY AREA COUNTIES REGIONAL
 21 ROOFING JOINT APPRENTICESHIP AND
 22 TRAINING COMMITTEE; SOUTHERN
 23 CALIFORNIA ROOFERS AND
 24 WATERPROOFERS JOINT APPRENTICESHIP
 25 AND TRAINING COMMITTEE,

DAS NO: 99-07

26 Charging Parties/Appellants,

27 Vs.

28 INDEPENDENT ROOFING CONTRACTORS OF
 29 CALIFORNIA UNILATERAL APPRENTICESHIP
 30 COMMITTEE,

31 Respondent.

32 BRIEF OF AMICUS CURIAE CALIFORNIA APPRENTICESHIP COORDINATORS
 33 ASSOCIATION TO THE CALIFORNIA APPRENTICESHIP COUNCIL

EXHIBIT

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1 The CALIFORNIA APPRENTICESHIP COORDINATORS ASSOCIATION (hereinafter
2 "CACA") hereby submits this *Amicus Curiae* Brief in support of the Charging Parties' positions in
3 both of the above appeal matters. CACA was granted permission to file a Brief as *Amicus Curiae*
4 in the PHCC matter. CACA files this brief in support of the Charging Parties' positions in the
5 IRCC matter because that matter raises the same issues as those under consideration in the PHCC
6 case.

7 I. INTRODUCTION

8 The CALIFORNIA APPRENTICESHIP COORDINATORS ASSOCIATION is a non-
9 profit corporation consisting of representatives from every building trades joint apprenticeship
10 committee in California. These programs currently train more than 25,000 apprentices throughout
11 the State of California. CACA has been in existence for many years dedicating itself to protecting
12 the welfare of apprentices registered with the State Division of Apprenticeship Standards and
13 serves as an important advisory group to the CAC itself.

14 The members of CACA have familiarized themselves with the issues presented in both the
15 PHCC and IRCC cases, are aware of the Director's Decisions currently under consideration by the
16 CAC Appeals Panel and voted to fully support the positions of the Charging Parties in these
17 matters.

18 CACA believes that only by adopting the remedies sought by the Charging Parties can the
19 CAC enforce the statutory and regulatory law mandated by our State Legislature and the CAC
20 itself and, further, that the remedies proposed by the Charging Parties must be granted to insure the
21 welfare of the apprentices in the affected Programs. Therefore, CACA adopts and supports the
22 Briefs submitted by the Charging Parties in the PHCC and IRCC cases. CACA will thus restrict its
23 comments primarily to the remedy which it believes should be ordered by the CAC.

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II. ARGUMENT

A. THE APPROVALS OF THE STANDARDS EXPANSION FOR BOTH THE PHCC AND IRCC PROGRAMS WERE ILLEGAL AND SHOULD BE VACATED BY THE CAC

As is more fully set forth in Charging Parties' Briefs in both cases, Acting Chief Tsuda clearly violated both the statutory and regulatory law when she unilaterally, and without notice, granted approval to the PHCC and the IRCC to operate outside of the geographical boundaries contained in their initial standards approval. (Labor Code Section 3075; 8 CCR Sections 212.2(f) and 212.2(h)) Since her actions were in excess of any authority granted to her and, in fact, in direct violation of the laws the DAS is required to uphold and enforce, her actions must be declared null and void by the CAC. To do otherwise would make a mockery of the statutory scheme the State Legislature and the CAC established in order to protect the welfare of apprentices.

While the Respondents urge the CAC to ignore these clear violations of the law, CACA respectfully submits that the CAC may not do so. How is the CAC to pick and choose between the laws with which it will require compliance and those it will not? How is the apprenticeship community, and especially the apprentices who are governed by the Regulations of the CAC, to know which rules they must abide by and which rules they can invoke for their protection if the CAC determines on an *ad hoc* basis those rules that will be enforce and those that will be ignored?

Both Respondents PHCC and IRCC knew full well that they had not complied with the statutory process for receiving approval of their requested expansions. Both knew that they had not submitted evidence to establish a need for the expansions within the meaning of Labor Code Section 3075. Both Respondents knew that the existing programs in the same occupation and serving the same geographic area were never given notice of the requested expansions nor given an opportunity to comment on the requested expansions. Both Respondents knew that Acting Chief Tsuda had not issued a written opinion, with detailed findings of fact, justifying the approved expansions as required by law. Since both Programs knew full well that they and Ms. Tsuda acted

1 outside of the regulatory process, they did so at their own risk and should not now be given the
2 ability to escape the outcome of these *ultra vires* actions. Therefore, CACA urges the CAC to
3 declare the approved expansions of both Programs null and void.

4 **B. FOR THE PROTECTION OF THE APPRENTICES, THE CAC SHOULD ORDER**
5 **THE CANCELLATION OF ALL APPRENTICE INDENTURES IN THE PHCC**
6 **AND IRCC PROGRAMS OUTSIDE OF THEIR LAWFULLY APPROVED**
7 **GEOGRAPHIC AREAS AND TRANSFER THOSE APPRENTICE INDENTURES**
8 **TO LAWFULLY APPROVED PROGRAMS IN THE SAME OCCUPATIONS.**

9 In the PHCC Decision, the Director issued a cease and desist Order prohibiting the PHCC
10 Program from recruiting or indenturing new apprentices outside of its lawfully approved
11 geographic area. CACA submits that the same type of cease and desist Order should be
12 immediately issued to the IRCC Program to insure no further violations occur and to minimize the
13 damages suffered by apprentices being indentured into illegal programs.

14 Unfortunately, the Director declined to order cancellation of the unlawful apprentice
15 agreements on the speculation that apprentices might suffer if their apprentice agreements were
16 cancelled by loss of on-the-job training and related and supplemental instruction opportunities. In
17 fact, CACA submits that the apprentices in these Programs will suffer if their apprentice
18 agreements are not cancelled.

19 First and foremost, the Charging Parties in both the PHCC and the IRCC cases have
20 indicated that they have the capacity and are willing to take into their lawfully approved Programs
21 all apprentices whose apprentice agreements might be cancelled, and that all of those apprentices
22 will receive proper credit for any time served in the PHCC or IRCC Programs. CACA, of course,
23 will use its good offices to assist in any way possible to make these transfers a smooth and
24 successful process.

25 Second, CACA cannot understand any justification for leaving apprentices in dying
26 programs which will certainly decrease the value of their apprenticeship training, if any training
continues to be given, by the PHCC or IRCC Programs in these areas. Since the PHCC (and, we


1 submit, the IRCC Program as well) will not be able to recruit or indenture any more apprentices in
2 these areas, there is no incentive for employers to continue contributing to the financial well-being
3 of the programs. Ultimately, the Programs will die through attrition. During that process, the
4 Programs will cease to have any financial integrity.¹ Thus, to the extent training is occurring, it
5 will be second-rate at best. The apprentices in those Programs should not be relegated to "second
6 class citizens" under the auspices of the CAC simply because the Programs which they joined
7 failed to comply with the law. This is especially true where there are lawfully approved
8 Apprenticeship Programs which have been in existence for decades and are willing to offer them
9 first rate training in both on-the-job and related and classroom instruction with no loss of credit for
10 the time they have already served in the illegal programs.

11 CACA respectfully submits that the CAC's concern should be for the apprentices, since it
12 is safeguarding the welfare of the apprentices with which the CAC is charged by statute. The
13 CAC's primary concern should not be with the employers or sponsors of the PHCC and IRCC
14 Programs who knowingly violated the law and now seek to avoid reaping what they have sown.

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16 Dated: April 30, 2001

Respectfully Submitted,

VAN BOURG, WEINBERG, ROGER & ROSENFELD

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19 By: 
20 SANDRA RAE BENSON
21 Attorneys For *Amicus Curiae* California Apprenticeship
22 Coordinators Association
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26 ¹ As the CAC knows, a commitment to the "financial integrity" of the program is a necessary
showing under the CAC Rules and Regulations before an apprenticeship program may be
approved.

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 180 Grand Avenue, Suite 1400, Oakland, California 94612. On April 30, 2001, I served upon the following parties in this action:

VIA HAND DELIVERY

California Apprenticeship Council
C/O Henry Nunn III
Chief
Division of Apprenticeship Standards
455 Golden Gate Ave., 8th Floor
San Francisco, CA 94102

VIA HAND DELIVERY

Mr. Julian Standen
Office of the Attorney General
50 Fremont Street, #300
San Francisco, CA 94105-2239

VIA U.S. MAIL

Ronald W. Brown
Cook, Brown & Prager
555 Capitol Mall, Suite 425
Sacramento, CA 95814

VIA HAND DELIVERY

John J. Davis
Davis, Cowell & Bow
100 Van Ness Avenue, 20th Floor
San Francisco, CA 94102

copies of the document(s) described as:

**BRIEF OF AMICUS CURIAE CALIFORNIA APPRENTICESHIP
COORDINATORS ASSOCIATION TO THE CALIFORNIA
APPRENTICESHIP COUNCIL**

[XX] BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the practice of Van Bourg, Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[XX] BY PERSONAL SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.

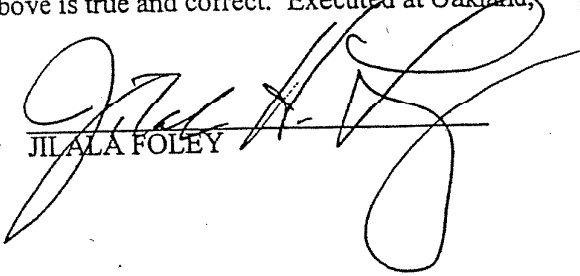
[] BY OVERNIGHT DELIVERY SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Van Bourg, Weinberg, Roger & Rosenfeld, Oakland, California. I am readily familiar with the practice of Van Bourg, Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight

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Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.

[1] BY FACSIMILE I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Oakland, California, on April 30, 2001.


JILALA FOLEY